B4

U.S. Department of Homeland Security

Citizenship and Immigration Services

PUBLIC COPY

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass Ave., 3rd Floor
425 Eye Street N.W.
Washington, D.C. 20536

[redacted]

NOV 19 2003

FILE: LIN 02 119 55390 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
Beneficiary

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Nevada corporation and is claimed to be the parent company of [redacted] located in Canada. The petitioner is engaged in the consumer retail business. It seeks to employ the beneficiary as its vice president of marketing integration and transformation. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager. The director determined that the petitioner had not established that the beneficiary had been employed abroad by a qualifying foreign entity for a least one year in the three years prior to the beneficiary's entry into the United States as a nonimmigrant.

On appeal, counsel asserts that the director's denial was erroneous as a matter of law and incorporates previously submitted documentation as part of the appeal.

Section 203(b) of the Act states, in pertinent part:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> * * *
>
> (C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a

> subsidiary or affiliate thereof in a capacity that is managerial or executive.

The language of the statute is specific in limiting this provision to only those executives and managers who have previously worked for the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement which indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien.

The issue in this proceeding is whether the beneficiary has the requisite one year of employment abroad with a qualifying entity, per the above statutory requirement.

In the initial filing, the petitioner stated that the beneficiary commenced employment with its Canadian subsidiary in 1999 and continued to work there until he relocated to the United States in 2001. The petitioner also attached copies of the beneficiary's visa pages showing an initial entry into the United States as a TN non-immigrant on September 23, 1999, as well as a number of approval notices indicating that the beneficiary was granted H-1B non-immigrant status on January 20, 2000, and L-1A non-immigrant status on November 8, 2001.

On June 4, 2002, the director issued a notice stating that the documentation and statements submitted by the petitioner indicate that there was a very brief time sequence between the beneficiary's commencement of employment with the Canadian subsidiary entity and his entry into the United States as an H-1B non-immigrant. The director suggested that in light of this time sequence the beneficiary was unlikely to have worked for the foreign entity for the requisite one year prior to his entry into the United States as a non-immigrant. The director, therefore, requested that the petitioner submit evidence to

establish the beneficiary's one year of employment abroad in a qualifying capacity.

In response, counsel provided a statement explaining that incorrect information had been previously provided and that in 1999 the beneficiary commenced employment with Best Buy Company in Minnesota not Best Buy Concepts in Canada, as had been initially indicated in the statement submitted with the petition. Counsel further stated that upon commencing employment in the United States, the beneficiary "was quickly steered towards Best Buy's Canadian adventure" which consequently "necessitated somewhat of a return to Canada indeed due to frequent and extended trips." Counsel explained that due to the constant travel to and from Canada, the petitioner petitioned for an H-1B non-immigrant visa, and subsequently for an L-1A intracompany transferee visa, on the beneficiary's behalf. Counsel emphasized that the beneficiary has maintained his residence in Canada throughout his employment and provided a letter from Bust Buy's Human Resources Department stating that the beneficiary assumed the role of Director of Marketing for Canada in October 2000.

Despite the submitted evidence, the director denied the petition, concluding that the petitioner failed to submit sufficient evidence to establish that the beneficiary has been employed by a qualifying foreign entity for one year prior to his entry into the United States as a TN nonimmigrant in September 1999. The director noted that based on the amendments to the record that have been submitted since the petition was filed, it cannot be concluded that the beneficiary was employed abroad prior to commencing his employment in the United States in October 1999.

On appeal, counsel asserts that the petitioner established that the beneficiary worked abroad for one year during the three years prior to the filing of the instant petition. Counsel argues that the director erred, as a matter of law, in determining that the relevant three-year time period is from September 23, 1996 to September 23, 1999.

Counsel's assertions are incorrect. Pursuant to 8 C.F.R. § 204.5(j)(3)(i), the petitioner must demonstrate the following, in pertinent part:

> (B) If the alien is already in the United States working for the same employer or a subsidiary or affiliate of the firm or corporation, or other legal entity by which the alien was employed overseas, *in the three years preceding entry as a nonimmigrant*, the alien was employed by the entity abroad for at least one year in a managerial or executive capacity.

(Emphasis added.)

In the instant case, the beneficiary's initial entry as a non-immigrant occurred in September 1999. Therefore, contrary to counsel's apparent misconception, the relevant three-year time period is the three years prior to September 1999, not the three years prior to the filing of the petition, as counsel asserts. In fact, even if CIS were to focus on the three-year period prior to the filing of the petition, the record is still void of evidence to establish that the beneficiary was employed with a qualifying entity abroad. The evidence of record repeatedly suggests that even though a large part of the beneficiary's work takes place in Canada, the beneficiary has been and continues to be employed by the U.S. petitioner, not by one of its subsidiaries abroad. The fact that the beneficiary maintains a residence in Canada does not establish that he was employed by an entity abroad during the relevant time period.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.